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C O N T E N T S.

Legal Department File No. 0. S.S.C.EXAM/49

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JPE.7/6/86.
5 copies.

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Office of the S.L.A.

n E. & I.D. file 8364/39669, the Registrar, Bombay University, inquires whether it is permissible for the University to entertain any application from a school in Bombay for recognistion of that school for the purpose of the Entrance Examination of the University. The registrar thinks that under section 33 of the Bombay University Act, 1928, as amended by the Bombay Secondary School Certificate Examination Act, 1948, the University seems tohave power only to affiliate schools in Indian States and other territories as the Provincial Government may specify, The Registrar requests confimation of his view.

It is true that the Bombay University will hereafter have no power to prgide for conditions to be complied with by schools within the Province desiring recognition for the purpose of the S.S.C.Examination or any examination other that its Entrance Examination. If the provincial Government gives consent to the Bombay University to lay down, by means of Statutes, the conditions to be complied with by schools desiring recognixtion for the purpose of sending up pupils as candidates for such Examination is not fettered in any way by the definition of the word "schools" as given in the Exaplanation to clause (kk 2), as that Explanation does not apply to clause (kk 1). The power of the University under clause (kk 1) extends to all schools within its jurisdiction as curtailed by the Poona University Act, 1948.

In the E. & I.D. file No.7955/34938, the Registrar of the ~~Bombay~~ Bombay University inquired whether Govt. proposes to take over the inspection and supervision of schools which are at present recognised by the University under Statute 188 only, if the elect to send up their candidates for the Secondary School Certificate Examination. Under the said Statute the following categories of schools have been registered by the University, and so long they confer to be such registered schools they are

eligible.....

eligible to send up candidates for the S.S.C.Examination under regulation 29 of the Bombay Secondary School Certificate Examination Regulation, 1948:-

(1) Schools in the Bombay Province which were not recognised by the Educational Department,

(2) Schools in Indian States which could not be recognised by the Educational Department of the Bombay Province.

(3) Schools in othe territories like Goa.

The Schools recognised under Statute 188 were recognised for the purpose of the Matriculation Examinati under clause (kk) of section 33(1) ofthe Bombay University Act. These provisions have been amended by section 34 of the Bombay Secondary School Certificate Examination Act, 1948, and with effect from the date the amendments came into force the recognition granted forthe purpose of the Maticulation Examination naturally came to an end, sincee the University has no longer the power to hold such examination or to recognise schools for its purpose. The University cannot, therefore, continue or renew the recognistion originally granted to such schools not inspect or supervise them with reference to conditions imposed for recognition. It would seem, therefore, that they are no longer recognised schools within the meanging of the definition given in section 2(h) of the Bombay Secondary School Certificate Examination Act. In order that these schools may be enabled to send pupils for the S.S.C.Examination, it would, therfore, be desirable that the D.P.I., Bombay Province, should, for the time being, recognise them and in future they would have either to seek recognition by the D.P.I. forthe purpose of the S.S.C. Examination or they might seek recognition of the University for the purpose of the entrance Examination if one is allowed to be instituted.

The schools in the second category can be divided into two classes viz. (1) schools in those Indian States over which the Government of Bombay exercise jurisdiction

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under the power delegated to it by the Extra-Provincial Jurisdiction Act, 1948, and (ii) schools in Indian States over which the Government of Bombay does not exercise any jurisdiction. As stated above, schools in both kinds of States cease to be recognised on thecoming into force of section 34 of the S.S.C.Examination Act. Under the Administration of Indian States Order, the D.P.I., Bombay Province, has no doubt, been declared to be the head of the Education Department for the States over which he exercises jurisdiction in pursuance of the Extra-Provincial Jurisdiction Act, 1947. He would, therfore, have power to recognise the schools in such States, but not strictly speaking ib his capactiy as the D.P.I., Bombay Province, but D.P.I. for the States; The Government of Bomaby can, however, by an executive order direct these States to send their pupils for an examination held by the Board or in the alternative the Act can be made applicable to all the States with suitable modifications, so as to make it possible for them to adopt the Board for their purposes also. No difficulty about inspection should arise because the D.P.I., as the Head of the Department , would be competent to direct their inspection. Perhaps these States will soon* become part of the Province as the Bill for that purpose is reported to have been passed by the Dominion Legislature.

The schools in the States over which the Government of Bombay have no jurisdiction and theSchools in other territories like Goa stand on the same footing for purposes of recognition and its continuance. As said above, the recognition, which was for the purposes of the Matriculation Examination, must be deemed to have terminated. But, it would be open to these schools to send their pupils to the examination held by the Board, since the Board is Corporation and according to the principle of International Law is not precluded from operating extra-territorially, although the Act setting up the Corporation cannot in terms be extended extra-territorially,. Of course, there will still remain the difficulty of inspection in the case of

such schools. The University will have no power nor will the D.P.I. have any power to inspect them.

Id/- P.M.L.
6/1/
Remembrancer of Legal Affairs.

U.S. to E.& I.D. 166 dated 6th January 1949.

JPE.6/6/
4 copies.

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Under section 34 of the Bombay Secondary School Certificate Examination Act, 1948, clause (kk 2) was substituted for clause (Kk) in sumb -section (2) of section 33 of the Bombay University Act, 1928. That clause enabled the University of Bombay to recognise schools in the Indian States and other territories notified under section 4 A for the purpose of sending of pupils as candidates for the secondary school certificate examination. It has been held in R.L.A's opinion No. 166 dated the 6th January 1949 that the recognition already granted to such schools prior to this amendment has come to an endxand, had the University framed Statutes for granting recognition under clause (kk 2) these schools would still have been treated as recognised high schools within the definition of that term in section 2 of the Act; and they would then have been eligible to send up candidated under Regulation 29 of the Bombay Secondary School Certificate Examination Regulations, 1948. The difficulty has arised because of the omission of the University to framed the necessary Statutes with reference to clause (kk2). I understand that there is no time left now for getting such Statutes framed nor for so expanding the Regulation as to make it possible for the Board to admit candidates from high schools other than recognised high schools with reference to the inherent power of a corporation to operate extra territorially so l ng as the Governments of the territories concerned do not object to such operation (vide R.L.A's U.R. to P.S.G. No.625-P, dated the 7th October 1936, E.D. letter to the Govt. of India No. P.S.G's U.O.R.s 8/8/36, dated the 17th November 1936 and R.L.A's opinion No. 166 dated 6/1/49). R.L.A's opinion No.11937 of 16/12/1948 was given with reference only to the Regulati and not with reference to such inherent powers. These

opinions....

opinions require no modification.

2. The immediate difficulty has now to be solved in practical manner without undue insistence upon legalistic procedure. The Board may be instructed to inform the high schools concerned that the Board will have no objection in its inherent power referrred to above to examine pupils sent by them for the S.S.C. examination. The Board may simultaneously be invite to frame an additional regulation to cover such cases and, although as a rule subordinate legislation should not be retrospective in operation, the new Regulation may be made retrospective inasmuch as no vested interests are affected and no legal complications are likely to arise in practice.

Id/- P.M.L.

Remembrancer of Legal Affairs.

U.R. to E. & I.D. No. 830

dated the 22nd January 1949.

JPE.6/6/56.
4 copies.

L.D.R.I.No. 16370/49.

Under sec. 29 read with para (b) of sub-sec. (2) of sec. 3 of the Bom. Secondary School Certificate Examination Act, 1948, Rev. A.H. Coyne was nominated by Govt. as one of the members representing the Academic Council of the Bom. University on the Secondary School Certificate Examination Board. Rev. Coyne has since submitted resignation of his seat as a member of the Board presumably under sec. 13, and the Chairman of the Board recommended the appointment of Rev. F. Melchmis M. Balaguer, while D.P.I. has recommended Principal Advani, The Asstt. Secy., E.D., is of opinion that under sec. 29 of the Act the members referred to in para (B) of sub-sec. (2) of section 3 can be nominated by Govt. only once at the time of the first constitution of the Board, and consequently any casual vacancy among such members cannot be filled by Govt. by nomination.

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Question Whether a casual vacancy of members in para.(B) of sec.3(2) can be filed by nomination under sec. 29

Bombay Secondary School Certificat Examination Act, 1948. Sec. 3,24,29

The view of the Asst. Secy., E.D., is not correct

2. Under section 14 of the Bombay General Clauses Act, 1904, where any power is conferred on any Government, then that power may be exercised from time to time as occasion requires. Section 13 of the Bombay Secondary School Certificate Examination Act, provides that a member of the Board (except Ex-officio) may resign his seat by giving notice in writing to the Chairman, and such member shall be deemed to have vacated his seat as soon as the Chairman has received the resignation. Under section 24, all casual vacancies among the members of the Board (other than ex-office members) shall be filled by election, nomination or appointment as the case may be, and the person selected, nominated or appointed to a casual vacancy shall hold office so long only as the member in whose place he is elected, nominated or appointed would have held it if the vacancy had not occurred Asx Rev. Coyne who was nominated by Government under section 29 of the Act has resigned, it would be competent for Government to nominate another person vice Rev. Coyne under section 24.

Id/- P.M.L. 4/10

[illegible]ncer of Legal Affairs.

U.R. to E.D.,No. 1168, dated the 6th October 1949.

JPE.6/6/56.4c.

OFFICE OF THE R.L.A.

CONFIDENTIAL.

It appears that by G.R., E. & I.D., No. 7955(a) dated the 11th October 1948 Government nominated Dr.G.S. Khair on the Secondary School Certificate Examination Board under section 3(2)(B) read with section 29 of the Bombay Secondary School Certificate Examination Act, 1948. Dr. Khair has since ceased to be a member of the Academic Council of the Bombay University, nor is he a member of the Academic Council of the Poona University. The question raised for theconsideration of the R.L.A. is whether Dr. Khair's seat has become vacant and, if so, whether Government can nominate some other member of the Academic Council on the S.S.C.E. Board.

2. Under section 29 of the Bombay Secondary School Certificate Examination Act, 1948, the members referred to in paragraph (B) of sub-section (2) of section 3 may on the first constitution of the Board be nominated by the Provincial Government but the members so nominated by shall hxxxhold office only until they can be replaced by members elected as provided in that paragraph and the members so elected shall hold office so long only as the members replaced would have helf office had they not been replaced The proviso to section 3(2) will not be applicable to nominations made under section 29; Dr.Khair will not, therfore, cease to hold office merely by reason of the fact that he has ceased to be a memeber of the Academic Council and he can continue in office until theUniversity elect their representatives or his term of officex expires. His seat cannot be considered vacant and no fresh nomination thereto can be made under section 29.

Id/- P.M.L.
10/7/

Remembrancer of Legal Affairs.

U.R. to E. & S.D.No.,508-Conf. dated the 10th August 1949.

JPE.6/6/56.4c.

OFFICE OF THE A.G.A.

Bombay Secondary School Certificate Examination Act, 1948.

Sec.15(h).

The Secondary School Certificate Examination Board is corporate body and its funds can be expended for the purppses of the Secondary School Certificate Examination Act, 1948. As stated in the preamble of the Act the Board is established for purpose of holding andconducting an examination etc. The award pf prized to the candidated who have distinguished themselves at the examination would be incidental to the holding of the examination and as such may fall under section 15(h). There would therefore be no legal objection to the Board awarding prizes as proposed by the Director of Public Instruction. It is however desirable to make regulations under section 26 for the purpose.

Id/- P.M.L.
1/9

Remembrancer of Legal Affairs.

U.R. to E. & I.D',No.9925, dated the 1st September 1949

PE.6-5-56-
copies.

OFFICE OF THE R.L.A.

Bombay Secondary Schools Certificate Examination Act, 1948.

Section 2(h)

Schools in Batavia and Sumatra.

Although on a plain reading the words "recognised by the Director of Public Instruction, Bombay Province" in the definition of the expression "recognised high school" in section 2(h) of the Bombay Secondary School Certificate Examination Act, 1948 do not necessarily mean recognition by the Education Department under the Grant-in-Code, it has all along been understood that it is this latter kind of recognition that was inteded; since there is no provision in the Act enabling the Direct, etc to give recognition for purposes of the Act and the only recognition now known is that under the Grant-in-Code. Besides, this definition is also intended to provide for representation of recognised schools on the Board constituted under section 3. If the schools in Batavia and Sumatra are recognised under section 2(h) for the purpose of enabling them to send up the candidates forthoexamination, those schools may possibly claim representation on the Board, which it would not be possible to allow, as the Act can have no extra territorial jurisdiction. Consequently, the question of recognising the schools in Batavia and Sumatra for the purpose does not arise. Howevery the same thing can be achieved by allowing the Indian students from Batavia and Sumatra to appear for the examination, for, as pointed out by the R.L.A. in his last opinion No. 166 dated 6/1/1949, it would be open to the schools in places like Goa to send their pupils to the examination held by the Board, since the Board is a Corporate and according to the principles of International Law is not precluded from operating extra-territorially, although the Act setting up the Corporation cannot in terms beextended extra-territorially. If Government decides to allow the school in Batavia and Sumatra to send up their students for the Secondary School Certificate Examination, Regulations may be made to that effect under section 28 of the Bombay Secondary School Certificate Examination Act.

Id/- P.M.L.
18/11/49
Remembrancer of Legal Affairs.

U.R. to P.W.D.No.13127 dated the 18th November 1949. JPE.